IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL MISCELLANEOUS APPLICATION NO. 114 OF 2003**

Mr. Hiten D. Jangla,
of Mumbai, Indian
Inhabitant, having
address at C-40, TTC
Industrial Estate,
Thane Belapur Road,
New Bombay. ... Applicant.

versus

1. Puja Ferro Alloys Ltd.,
   through its Director,
   Shri Pankaj Jain,
   having its Registered
   Office at L-4, Cuncolim
   Industrial Estate,
   Cuncolim, Salcete, Goa.

2. M/s. Grand Foundry Ltd.,
   C-40, T.T.C. Industrial
   Area, Thane-Belapur Road,
   Village Pawne, Post K.U.
   Bazar, Navi Mumbai, 400 075.

3. State of Goa, through
   Public Prosecutor,
   High Court, Panjim. ... Respondents.

Mr. S. M. Singbal, Advocate for the Applicant.

Mr. Arun Bras de Sa, Advocate for Respondent No.2.

Mr. M. Salkar, Advocate for Respondent No.1.

CORAM: P. V. HARDAS, J.

DATED: 14TH AUGUST, 2003.

ORAL JUDGMENT

Heard Mr. S. M. Singbal, learned Counsel for the Applicant, Mr. Arun Bras de Sa, learned Counsel for Respondent No.2 and Mr. M. Salkar, learned Counsel for Respondent No.1.

2. After hearing the learned Counsel for some time, the learned Counsel for the Applicant states that he may be permitted to withdraw this application under Section 482 of the Code of Criminal Procedure with liberty to apply to the learned Trial Court for recalling of the Order.

3. Before granting liberty as prayed, it is necessary to make a reference to certain facts. The point that is canvassed before me in this application is that a judicial Order under Section 22A of the Sick Industrial Company(Special Provisions) Act, 1985 was passed by the Board of Industrial and Financial Reconstruction on 11th September, 1998. The cheque in question was issued on 12th December, 2001 and a notice of dishonour of the cheque is dated 22nd January, 2003. It is thus submitted that since the cheque had been issued and the offence under Section 138 of the Negotiable Instruments Act, 1881 is complete after the Order of the BIFR dated 11th September, 1998, the Directors

cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act, 1881. Reliance is placed by the learned Counsel for the Applicant on a Judgment of the Apex Court in **Kusum Ingots & Alloys Ltd. v. Pennar Petersons Securities Ltd. and others** (2000) 2 SCC 745.

4. The Applicant herein had not filed an application for recalling of the process of the learned Judicial Magistrate First Class, Margao but had filed a Criminal Revision Application No.39 of 2002 before the District & Sessions Judge, South Goa, Margao. Since this point was urged before the learned Revisional Court, the learned Revisional Court in para 21.1 has held that it could not consider fresh material which were not produced before the Judicial Magistrate First Class, Margao. This application under Section 482 of the Code of Criminal Procedure, therefore, arises against the Judgment of the learned District & Sessions Judge, Margao in Criminal Revision Application No.39 of 2002, dated 15th January, 2003.

5. The learned Counsel for the Applicant, thus seeks to file an application for recalling of the process before the learned Judicial Magistrate First Class, Margao urging the point which is

raised in the present application under Section 482 of the Code of Criminal Procedure. The learned Counsel for the Applicant further undertakes that the Applicant/Accused would appear before the learned Judicial Magistrate First Class, Margao on the next date fixed by the learned Trial Court and shall execute the necessary Bail Bond. The Applicant will thereafter apply to the learned Trial Court for recalling of the process issued against them. The learned Trial Court shall, if such an application is filed, decide the said application uninfluenced by any observations made by the learned District & Sessions Judge, South Goa, Margao in the Order impugned in this application.

6. With the aforesaid directions, Criminal Miscellaneous Application No.114 of 2003 is dismissed as withdrawn with the aforesaid liberty with no order as to costs.

P. V. HARDAS, J.

RD.